IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

D.B. CIVIL SPECIAL APPEAL (W) NO.68/1996

Rajendra Behari Joshi
Vs.
State of Rajasthan & Ors.

Date of Judgment :: 15 February, 2007

P R E S E N T

HON'BLE THE CHIEF JUSTICE SHRI S.N. JHA
HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Shri Bhanwar Bagri for the appellant.
Shri H.V. Nandwana Dy.G.A. for the respondents.

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BY THE COURT (PER HON'BLE THE CHIEF JUSTICE)(ORAL):

REPORTABLE

This special appeal is directed against the order of the learned Single Judge dated 22.12.1995 dismissing the writ petition of the appellant. The appellant had filed the writ petition, S.B. Civil Writ Petition no.5492/1995, for quashing the order of the Assistant Registrar, Co-operative Societies, Bundi dated 9.3.1993 rescinding the resolution of the Bundi Zila Sahkari Bhoomi Vikas Bank Limited (hereinafter referred to as 'the Bank') as well as the appellate order of the Additional Registrar (Appeals), Co-operative Societies, Kota dated 3.11.1995 dismissing the appeal of the appellant preferred against the said order of the Assistant Registrar.

Facts of the case, briefly stated, are that on 7.8.1982 the appellant was appointed on a class IV post on temporary basis under resolution of the Board of Directors of the respondent-Bank dated 6.8.1982. By order dated 10.8.1982 the appellant was directed to perform the duties of clerk keeping in view his academic qualification of secondary pass and experience. On 18.11.1986 he was appointed as cashier-cum-clerk in the scale of Rs.400-1343. It is stated that the said appointment was pursuant to the resolution of the Board of Directors dated 18.11.1986. Though the appointment was supposed to be for a period of three months, it was continued from time to time. On 12.1.1990 the Assistant Registrar, Co-operative Societies, Bundi issued notice under Section 32 to the Bank to show cause why the resolution dated 6.6.1989 extending the appellant's appointment as clerk-cum-cashier be not rescinded. The proceeding was dropped on 2.5.1990. However another notice was issued on 23.3.1993 under Section 32 of the Co-operative Societies Act 1965 calling upon the bank to show cause why the resolution dated 18.11.1986 be not rescinded. By the impugned order, finally, the resolution dated 18.11.1986 was rescinded by the Assistant Registrar. As indicated above, the appellant preferred appeal before the Addtioinal Registrar (Appeals) which was dismissed by order dated 3.11.1995.

Shri Bhanwar Bagri appearing for the appellant raised a short but pertinent point. He submitted that the impugned order was passed without issuing notice and giving opportunity of hearing to the appellant, and therefore the order is fit to be set aside on this ground alone. He drew our attention to para 1(ga) of the reply in this appeal to buttress his point that the order had been passed after giving notice to the bank alone and no notice had been issued to the appellant.

It may be mentioned here that the writ petition had been dismissed without issuing notice and therefore no reply was filed by the bank before the Single Judge. Reply has been filed in this appeal. The relevant part thereof referred to by the counsel runs as under :

> "1(G). That under Section 32 of the Act notice is issued to the Co-operative Society whose resolution is sought to be rescinded and what effect such rescinded will have and who all would be effect are not required to be given notice under Section 32 of the Act. . . "

The stand, strictly speaking, is in accord with the language of Section 32 of the Act which provides that where any resolution passed at the meeting of any co-operative society is in the opinion of the Registrar opposed to the objects of the society or is prejudicial to the interest of the Society, or is in excess of powers of the Society, he after giving

the co-operative society an opportunity of being heard, may rescind the resolution in whole or in part specifying the reasons therefor.

We are however unable to give a restricted meaning of the provision. The resolution may have been passed by the Co-operative Society – the Bank in the case in hand – but indisputably it is the appellant who stood to gain or lose. The resolution was in his favour, and if that is rescinded in exercise of power under Section 32, clearly, the person likely to be affected is the appellant and it would be against the basic rules of natural justice, if he is denied opportunity of hearing. Any order adversely affecting any person without giving opportunity of hearing has to be struck down as being violative of the rules of natural justice. A Division Bench of this Court in Jaisa Ram Mali Vs. The Assistant Registrar, Cooperative Societies, Sirohi in D.B. Civil Special Appeal No.901/1995 decided on 3.1.1996, at the Principal Seat of this Court at Jodhpur has taken similar view. Dealing with the point, the Bench observed as under :-

> "9. In Section 32 of the Act specific provision is made that an opportunity of being heard be given to the society concerned, but that does not mean that the legislature intended that the rules of natural justice be dispensed with in cases where the party to be affected by the decision that may be taken by the Assistant Registrar is other than the society. There is

> nothing to indicate in the entire scheme of Section 32 or in the scheme of the Act that the legislature intended to exclude the observance of principle of natural justice when the Assistant Registrar exercises power under Section 32 of the Act and his decision is likely to affect other parties.
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> 7. When the provision of a statute is silent as regards observance of principle of natural justice it is to be assumed that the principles of natural justice are to be observed by the authority concerned on whom the power to take decision is conferred. In substance the principles of natural justice are nothing but action in fair play. The legislature assumes that the authority on whom the power to take impartial decision is conferred shall act in just, fair and reasonable manner. There need not be commanded from the legislature to the authority concerned that it shall act fairly. To act fairly is an implied duty of all the authorities on whom the power to take just and impartial decision is conferred. Therefore, simply because there is no mention about an opportunity of being heard to the persons likely to be adversely affected by the decision that may be taken by the Assistant Registrar, it cannot be said that the observance of principles of natural justice by the Assistant Registrar while exercising powers under Section 32 of the Act, have been excluded by the legislature."

As seen above, it is the specific case of the respondents that notice was given to the respondent-bank and not to the appellant. In that view of the matter, we are satsified that there was violation of rules of natural justice and the impugned order of the Assistant Registrar is fit to be set aside on this ground alone.

In the reply, a plea has been taken that the appellant filed appeal before the Additional Registrar and the order was confirmed after hearing him The

plea has been noticed to be summarily rejected. It is well settled that where the order is void ab initio and without jurisdiction, post-decisional hearing muchless by a higher authority would not cure the defect. The fact that the appellant had preferred appeal and he was heard in the matter of disposal of the application is of no consequence.

In the result, the impugned orders dated 9.9.1993 and 3.11.1995 are quashed, however with liberty to the Assistant Registrar, Co-operative Societies, Bundi to proceed in the matter afresh in accordance with law. Needless to say that if he decides to proceed afresh, he shall give opportunity of hearing to the appellant.

The appeal is allowed in the above terms.

[MOHAMMAD RAFIQ], J. [S.N. JHA], CJ.

Skant/-